

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION**

CHRISTOPHER SINTEL KING,

Plaintiff

v.

JAMES PHILLIPS,

Defendants.

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**Civil Action No.
7:06-CV-57 (HL)**

ORDER

Before the Court is the Magistrate Judge's Report and Recommendation ("R&R") (Doc. 51), which recommends granting Plaintiff's Motion for Summary Judgment and Motion for Final Judgment (Docs. 44, 48). Pursuant to 28 U.S.C. § 636(b)(1), the Court has thoroughly considered Defendant's Objection and has made a *de novo* determination of the portion of the R&R to which Defendant objects.

Apparent from the R&R is that the Plaintiff's motions were granted due to Defendant's failure to respond. Defendant contends, however, that he failed to receive Plaintiff's Motion for Summary Judgment despite Plaintiff filing a Certificate of Service regarding the same (Doc. 46).

In regards to the notice requirements, the court must act with particular care when dealing with *pro se* litigants. In a Rule 56 motion an adverse party should "be given express, ten-day notice of the summary judgment rules, of his right to file affidavits or other material in opposition to the motion, and of the consequences of default." Griffith v. Wainwright, 772 F.2d 882, 825 (11th Cir. 1985). Under the

circumstances, whereby the Certificate of Service is the only notification that was sent, which the Defendant contends he failed to receive, the interests of fairness requires the Defendant be given an opportunity to respond.

The Plaintiff should be permitted the opportunity to re-file a motion for summary judgment, to which the Defendant should receive notice in accord with the above guidelines. Accordingly, the R&R is DENIED.

SO ORDERED, this the 26th day of September, 2008

s/ Hugh Lawson
HUGH LAWSON, Judge

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